



## Employment Law Brief

*with*

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**There was much public fanfare for the introduction of Parental Bereavement Leave - which will be available to parents who lose a child from 6 April this year. What strikes me most about the new right is the contrast between the modesty of the proposals (two weeks' leave paid at the same rate as statutory paternity pay) and the length and complexity of the Regulations implementing them.**

There are two sets of Regulations – The Parental Bereavement Leave Regulations 2020 dealing with the taking of the leave and the Statutory Parental Bereavement Pay (General) Regulations 2020 dealing with the (rather minimal) entitlement to pay. Without getting too bogged down in the details, let's look at how the overall scheme is intended to work.

The right to two weeks' parental bereavement leave arises on the death of a child under the age of 18 – or a still birth taking place after 24 weeks of pregnancy. An employee will qualify for the leave if he or she is the parent of that child – which is a term defined broadly enough to include adoptive parents, intended adopters with whom the child has been placed for adoption and foster parents who have had the child living with them for at least four weeks. It also covers the partner of anyone who qualifies as a parent.

All employees qualify for the leave – there is no continuous service requirement – and the two weeks' leave must be taken in blocks of at least one week. So the parent can choose to take both weeks together or take the leave as two separate periods of one week. Where more than one child has died, the two week's leave may be taken in respect of each child.

The leave may be taken at any time within the 56 weeks following the death of the child.

It has been suggested that one of the benefits of allowing the leave entitlement to be split into two separate periods – and then taken up to 56 weeks

after the initial bereavement - is that a parent will be able to take some of the leave at a time that may be particularly significant for them – such as on the child's birthday, or the anniversary of the death. This however makes the rather unrealistic assumption that the parent will have the presence of mind to only take one week's leave in the immediate aftermath of their loss. It seems much more likely that parents will take the whole of their leave entitlement in one go – and at the earliest opportunity. One thing to note, however, is the fact that Parental Bereavement leave is given in addition to any other leave to which the employee may be entitled. In many cases, for example, the mother of the child will still have an entitlement to maternity leave when the child dies and will therefore be able to take the remainder of that leave before then going on to take bereavement leave.

There is thankfully no requirement for the employee to give the employer evidence of the child's death – such as a death certificate. The parent must however notify the employer of the date of the death and the timings of when he or she proposes to take the leave. Where the first period of leave is to take place within 56 days of the death then there is no requirement to give notice as such – but the parent must inform the employer as soon as is reasonably practicable that he or she is taking the leave and whether it will be one week or two. When a period of leave is to be taken after the first 56 days, the employee must give the employer one week's notice of the date when he or she intends the leave to start and may



cancel the leave by giving the employer at least one week's notice of the cancellation.

There is no provision allowing the employer to refuse permission for the employee to take the leave or to defer it to another day. If the employee has given the proper notification then the employer must allow the employee to take the leave and must not be dismissed or subjected to any detriment for doing so.

When it comes to pay, the Parental Bereavement (Leave and Pay) Act 2018 provided that only employees with 26 weeks' continuous service would qualify for the right. Parents must also be paid at or above the lower earnings limit (currently £116 per week). The Regulations then set the amount of Parental Bereavement Pay at £151.20 or 90% of normal weekly earnings if that is lower. This matches the April 2020 figure for the lower rate of SMP and the rate for shared parental leave and statutory paternity leave. We can expect the rate for parental bereavement leave to increase every year in line with these other forms of leave.

It is not just the rates that match. The Regulations relating to pay mirror the provisions of these other types of family-related leave – with all the complexity that that entails. But this at least means that employers used to making these other payments should find it easy enough to slot Parental Bereavement Leave and Pay into the system.

The sheer number of pages that these two sets of Regulations take up can rather obscure how very modest this new right is – and how rarely it will be used. Government figures show that in 2016 there were some 7,600 child deaths – including stillbirths – in Great Britain. A majority of those deaths (67%) occurred in the first year of the child's life. Allowing for single parents - but also parents who have split and who are now living with new partners - the Government estimates that just 14,000 working parents per year will qualify for the right. In contrast, hundreds of thousands of employees take maternity or paternity leave every year.

In local government employment I would expect that any parent who loses a child would already be

supported and treated with compassion. In most cases you might expect that the effect of the bereavement would mean that the employee would be signed off as unfit to work and would be able to take a period of leave on full pay, well in excess of two weeks. The standard response to new employment rights is of course to produce a detailed policy on the subject but I would suggest approaching this particular topic with a light touch. I don't think there is any need to publish a policy that replicates all the procedural steps, qualifications and notice requirements that we find in the Regulations. That would make the policy seem bureaucratic and inflexible and that would not be the right tone to set. All that is needed is a brief statement to the effect that parents who lose a child will be entitled to two weeks leave (some employers may choose to pay this in full rather than the rather low statutory rate) and inviting them to contact the employer to discuss their options should the need sadly arise.

This is not an area where there will be a flood of applications and so each case can be dealt with individually with appropriate support and advice provided. Two weeks of leave is of course the bare minimum that all employers will be obliged to offer. Local government employers may well want to go further.

**Don't forget to check more about Darren Newman on his blog at [A Range of Reasonable Responses](#) or on twitter at [@DazNewman](#)**